

19 **REMARKS**

20

21       The Applicant respectfully requests reconsideration and Allowance of Claims 1-20 in  
22 view of the amendments above and the following arguments.

23

24 **SPECIFICATION**

25

26       The Specification was stated to be non-descriptive and a new title was required that  
27 is clearly indicative of the invention to which the claims are directed. As required by the  
28 Examiner, a new, more descriptive title has been provided.

29

30 **CLAIM OBJECTIONS**

31

32       Claim 8 was objected to for the reason that the preamble was unclear to the  
33 Examiner. As required by the Examiner, a revised preamble that describes the invention and  
34 a claim body that carries patentable weight is presented. As a result, Applicant respectfully  
35 requests that the objection to the claim be withdrawn and the claim allowed.

36

37 **35 U.S.C. §103 REJECTIONS**

38

39       Claims 1-20 were rejected under 35 U.S.C. §103(a) as obvious over Tominaga, U.S.  
40 Publication No. 2002/0015180 (Tominaga) in view of U.S. Publication No. 2002/0089687 to  
41 Ferlitsch et al. (Fertlisch).

42

43 **STATUS OF THE CLAIMS**

44

45       Claims 1-20 remain pending in this case..

46

47 **CLAIMS 1-20 ARE NOT OBVIOUS IN VIEW OF THE CITED ART**

48

49       The Examiner rejected Claims 1-20 under 35 U.S.C. § 103, as obvious over  
50 Tominaga, U.S. Publication No. 2002/0015180 (Tominaga) in view of U.S. Publication No.  
51 2002/0089687 to Ferlitsch et al. (Fertlisch).

Applicant respectfully traverses these rejections on the ground that Tominaga in combination with Ferlitsch does not suggest Applicant's invention as claimed and, further, there is no suggestion in Ferlitsch to modify the Tominaga device in the manner claimed.

#### **THE TOMINAGA PUBLICATION**

The stated objective of the Tominaga device is to prevent the illegitimate use of software having server functions and controller functions.(paragraph [0009]).The Examiner points out that Tominaga discloses a load balancing method wherein idle printers are found and jobs are distributed so that all printers have an even quantity of jobs appropriated thereto. (paragraph [0190])

The Examiner concedes, however, that Tominaga does not teach or suggest directing pending jobs from busy machines to the idle machines for processing as required by each of Applicant's claims. (Examiner's Office Action Page 3).

#### **THE FERLITSCH ET AL. PUBLICATION**

The Ferlitch publication claims the benefit of a provisional application for methods and systems for print-processor-based printer status detection and print task distribution. (paragraph [0001]). Ferlitsch discloses a process that first checks the status of printing devices as available or busy. [0047]. Once the status of the devices is determined, the process determines whether a default printing device is available or if another device is available to which the print job may be directed. [0048]. According to Ferlitsch, when no printing devices are available, the process may wait for a period of time to re-check device status. [0049]. According to Ferlitsch, if a printing device is busy the print job may be simply rolled over to the *busy printing device*. [0049] The wait time, according to Ferlitsch, results in the process of starting over at the beginning. That is, after the wait period, device status is re-checked. [0049]. Nowhere is it disclosed or suggested to identify idle and busy printers and redirect pending print jobs from busy printers to idle printers.

Again, although the Examiner has cited Applicant to paragraph [0049] as supplying the admittedly missing element of each of Applicant's claims (directing pending jobs *from busy machines to idle machines for processing*), Applicant finds no such disclosure there or elsewhere in Ferlitsch.

**Claim 1**

In contrast to the techniques of both Tominaga and Ferlitsch, Applicant's independent Claim 1 (as well as independent Claims 8, 12 and 18) is directed, in pertinent part, to a process power broker connected to a network for locating available process power on idle machines and directing pending jobs from busy machines to said idle machines for processing. As admitted by the Examiner, all Tominaga discloses is identifying idle printers and, as set forth above, all Ferlitsch discloses is identifying idle and busy printers and sending the print job to the idle one or even the busy one. Nowhere is it disclosed or suggested to identify idle and busy printers and direct pending print jobs from busy printers to idle printers. (See also, for example, the Application at page 3, lines 30-34 and page 4, line 1; and page 5, lines 3-8).

No such system as disclosed and claimed by Applicant is disclosed or suggested whatsoever by Tominaga and Ferlitsch either alone or in combination. More particularly, the Applicant respectfully submits that the combination does not result in the invention as disclosed and claimed.

Further, it is respectfully submitted that even if the combination did result in Applicant's invention, in order to combine prior art references or modify a prior art reference under 37 U.S.C. 103, there must be some teaching or suggestion in the prior art to make the combination or modification. In this case, the Examiner does not point to any teaching or suggestion in the prior art to add the wait period from Ferlitsch to Tominaga other than to state that it would have been obvious. The Examiner states it would have been obvious because one of ordinary skill in the art at the time would recognize the advantage that using Ferlitsch's distribution of print tasks to a plurality of printing devices without the use of additional hardware or server software for this purpose would produce economical results. (Examiner's Office Action page 3 citing paragraph [0011]Ferlitsch)]. Again, Applicant respectfully disagrees for the reason that adding the wait period to Tominaga as the Examiner suggests would necessarily change the principle of operation of Tominaga. That is, Tominaga is an already functioning technique for image forming and identifying idle devices. Further, adding a waiting period is completely superfluous to the Tominaga device.

If the proposed modification of the prior art would change the principle of operation of the prior art device, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F. 2<sup>nd</sup> 810, 123 U.S.P.Q. 349 (CCPA 1959) (see MPEP § 2143.01 at page 2100-99, second

column). In the present case, it is clear that if any such waiting period is to be functional then the principle by which Tominaga operates must be changed. Thus, in accordance with *In re Ratti*, it could not have been obvious to make the Examiner's proposed modifications.

The Applicant therefore respectfully submits that Claim 1, as well as independent Claims 8, 12 and 18 which require limitations similar to those in Claim 1, are not anticipated by, nor obvious over, Tominaga either alone or in combination with Ferlitsch and are entitled to allowance along with dependent claims 2-7, 9-11; 13-17; and 19-20 respectively.

#### **OTHER CITED REFERENCES**

Applicant has reviewed the other references cited by the Examiner but does not believe them to be more relevant than the ones set forth in the Office Action.

**CONCLUSION**

In light of the above, Applicant respectfully requests reconsideration and allowance of Claims 1-20. If the Examiner should feel that any issue remains as to the allowability of these claims, or that a conference might expedite allowance of the claims, the Examiner is asked to telephone the undersigned attorney.

Applicant intends this to be a complete response. No fee is believed due; however if a fee is due, please charge deposit account number indicated on the transmittal letter.

Respectfully submitted,

J. Nevin Shaffer, Jr., P.A.

Date: 28 FEB 05

By: J. Nevin Shaffer, Jr.

J. Nevin Shaffer, Jr., Reg. No. 29,858  
913 Gulf Breeze Parkway, Suite 43  
Gulf Breeze, FL 32561  
850-934-4124  
ATTORNEY FOR APPLICANT

**Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Date of Deposit: 28 FEB 05  
Reg. No. 29,858, J. Nevin Shaffer, Jr.

J. Nevin Shaffer, Jr.